***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION No.9134 of 2002

% 09.8.2007

Bondala Reddiyya, S/o.late Subbanna

...Petitioner

AND

$ The Agent to the Government, West Godavari at Eluru
And others.

...Respondents

! COUNSEL FOR PETITIONER: Sri P.R.K.Amarendra Kumar

^ COUNSEL FOR RESPONDENTS 1 TO 3: G.P for Social Welfare

COUNSEL FOR RESPONDENT No.4: Sri K.Bala Gopal

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. AIR 1982 AP 1 (FB)
2. (1995) 6 SCC 545 = AIR 1996 SC 224
3. 1994(2) An.WR 216
4. 2002(4) ALT 669 (DB)
5. 2000(4) ALD 443(DB)
6. AIR 1999 SC 22

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Between:
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THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9134 of 2002

ORDER:

In this writ petition, order dated 30.4.1999 passed by the Special Deputy Collector (Tribal Welfare), Kota Ramachandra Puram (SDC) – second respondent herein; is challenged as illegal and arbitrary and also seeking an order to set aside the same. The petitioner claims that he is the owner of agricultural land Acs.3.54 in R.S.No.22/1, Acs.3.52 in R.S. No.22/2 and Acs.3.26 in R.S.No.29 (total extent of Acs.10.32) situated at Nuthiramannapalem village of Buttaigudem Mandal in West Godavari District (hereafter called, the petition schedule land). He inherited the property from his mother, Bondala Narasamma. His mother purchased the property under registered sale deed dated 31.10.1957 from Dharanikota Durgamma, who being the only daughter of Bondala Narayana succeeded to it. The property was originally owned by one Pouloju Brahmam @ Brahmaiah of Koya community, a scheduled tribe. He sold the property to one Podium Ramudu, another scheduled tribe (Koya). After death of Podium Ramudu, his son Podium Chellappa obtained permission from Special Assistant Agent, Bhadrachalam, dated 28.3.1942. He along with his three minor brothers sold the property in favour of Bondala Narayana, father of vendor of petitioner's mother. In view of this, petitioner contends that the transaction is not prohibited by Andhra Pradesh Agency Tracts Interest and Land Transfer Act, 1917, or Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended by Regulation I of

1970 (the Regulation, for brevity).

In 1977, Podium Veeraswamy Dora, father of fourth respondent herein, filed SR No.26 of 1977 before the second respondent under Section 3(2) of the Regulation alleging that the mother of the petitioner Bondala Narasamma (who was shown as second respondent in the said case) is in possession of the land belonging to Veeraswamy. The matter was contested and after examining various documents including the permission granted by Special Assistant Agent, Bhadrachalam, by order dated 27.10.1970, second respondent dismissed complaint of the father of fourth respondent.

In 1988, fourth respondent herein filed yet another complaint under Section 3(2) of the Regulation being SR No.617 of 1998 before the second respondent. A plea was taken that the sale by Podium Chellappa in favaour of Bondala Narayana is not void as prior permission was obtained from competent authority i.e., Special Assistant Agent, Bhadrachalam. A plea of *res judicata* was also raised. The second respondent, after considering the evidence produced, allowed S.R. No.617 of 1998 in favour of fourth respondent and while directing the ejectment of the petitioner's mother from the land, ordered restoration of the land to the tribal. This order is assailed in the writ petition seeking invalidation of panchanama dated 22.4.2002 conducted by the authorities pursuant to the order of the second respondent.

The second respondent filed counter affidavit alleging that the Government of Andhra Pradesh conducted survey in the scheduled areas of West Godavari District in 1998 that during the said survey facts came to light that the ancestors of the petitioner fraudulently obtained sale deeds from tribals and therefore the complaint given by the fourth respondent was treated as a case under Section 3(2) of the Regulation. It is further alleged that as the parties in S.R.No.26 of 1977 are not the same, principle of *res judicata* does not apply. The writ petition is also opposed contending that the petitioner has not availed effective alternative remedy of appeal before the Agent to the Government.

The fourth respondent filed a separate counter affidavit opposing the writ petition. He pleaded that the petitioner is not the owner of the land and that the land belongs to Pouloju Veeraswamy Dora, father of fourth respondent. The present writ petition without availing effective alternative remedy of appeal, is not maintainable. The petitioner belongs to an influencial rich family of non-tribals. His ancestors played fraud on the father of fourth respondent and using Podium Chellappa as a pawn, obtained possession of the land, in contravention of the Regulation. Though earlier SR No.26 of 1977

was dismissed, Veeraswamy being poor having no resources could not file appeal. In 1998 when the Government took up the exercise of verification of record and enjoyment of lands in scheduled areas, new facts came to light establishing that the father of the petitioner and his predecessors fraudulently obtained documents. Therefore, SR No.617 of 1998 was filed seeking restoration of entire extent of Acs.10.32. Petitioner filed reply affidavit to the counter of fourth respondent asserting that in view of the permission granted by the Special Assistant Agent, Bhadrachalam, transfer of land in favour of Bondala Narayana by a tribal is valid.

Learned Counsel for the petitioner, learned Government Pleader and learned Counsel for fourth respondent orally reiterated their respective positions in the pleadings. Reliance is also placed by the learned Counsel for the petitioner on the decision of Full Bench of this Court in **Gaddam Narsa Reddy v Collector, Adilabad District**[1] and the decisions of this Court in **Deputy Collector v S.Venkata Ramanaiah**[2]. Learned Government Pleader relies on **Gaddam Raghavulu v Agent to Government**[3], **Special Deputy Collector (Tribal Welfare) v Datla Venkatapathi Raju**[4] in support of the contention that earlier proceedings do not operate as *res judicata*.

Two questions which fall for consideration: (i) whether the order of the second respondent dated 27.10.1977 in SR No.26 of 1977 operate as *res judicata*? and (ii) whether transfer of the land by Podium Chellappa and his three minor brothers in June 1942 is not void because Chellappa obtained permission under Section 4(1) of Act 1 of 1917 from the Special Assistant Agent, Bhadrachalam, and by reason of the same whether the transaction is not barred by Regulation I of 1959, as amended by Regulation I of 1970.

In Re Point Nos.1 and 2:

The father of fourth respondent, Veeraswamy Dora, filed SR No.26 of 1977 alleging that the mother of the petitioner, Bondala Narasamma, was in possession of the petition schedule land in contravention of the Regulation. There is no doubt that the petitioner is claiming through Bondala Narasamma and fourth respondent is claiming through Podium Veeraswamy Dora. Before the second respondent in SR No.26 of 1977 the brother of the petitioner, Bondala Satyanarayana deposed as R.W.1. Among others, permission granted by Special Assistant Agent vide memo No.6 of 1942 dated 17.5.1942, permitting the sale of petition schedule land was exhibited as Ex.B.3. The sale deed dated 28.6.1942 under which Bondala Narayana purchased properties from Podium Ramudu was marked as Ex.B.1

and the sale deed dated 22.5.1939 under which Pouloju Brahmam sold petition schedule land to Ramudu, S/o Podium Chellappa was marked as Ex.B.4. Second respondent noticed that Ex.B.3 permitted the sale of properties in Ex.B.4 to Bondala Narayana as a result of which Ex.B.1 was executed on 28.6.1942. After considering all the documents, second respondent in the order dated 27.10.1977 observed as under.

> The validity of their documents cannot be questioned since the sale of the lands in favour of non-tribal Bondala Narayana in Ex.B.2 by Podium Ramudu, S/o.Chellappa and his undivided brothers and son is covered by the permission granted by the Special Assistant Agent, Badrachalam, under Ex.B.3 under the provisions of the Act I of 1917. These lands were subsequently purchased by respondent 2 from the daughter of Bondala Narayana, vendee of Ex.B.2. The evidence of Podium Chellappa son of Podium Ramudu that he was taken to sub-registrar's office and got his thumb impression affixed to the documents there has no substance as the lands were sold by his late father Podium Ramudu while he was alive and his father signed the documents and no thumb impressions of his were got affixed to it as seen from the recitals in the document Ex.B.2

Again in 1998 presumably after death of Veeraswamy, fourth respondent filed complaint under Section 3(2) of the Regulation being SR No.617 of 1998. After receiving notices, petitioner and his brothers opposed the application *inter alia* contending that the case filed by the father of fourth respondent in S.R.No.26 of 1977 was already adjudged in favour of the petitioner. The plea of *res judicata* raised by the petitioner before the second respondent was not accepted and it was held that as Bondala Narasamma, mother of the petitioner, died prior to coming into force of the Regulation I of 1970 and the transfer of property in favour of petitioner took place after such Regulation came into force, fourth respondent has a fresh cause of action. As seen from the order of the second respondent in SR No.617 of 1998, impugned in the writ petition, various documents under which the parties acquired title and the permission granted by the Special Assistant Agent, Bhadrachalam, are not even discussed by the second respondent. The petitioner or his predecessor all along contended that the sale of property by a tribal in favour of non-tribal, vendor of petitioner's mother, was pursuant to the permission granted by the competent authority under Act 1 of 1917 and that the sale in favour of petitioner's mother dated 31.10.1957 being effected before coming into force of Regulation I of 1970, the sale is valid. Curiously this aspect of the matter was not even adverted to by the second respondent. Be that as it is, whether the petitioner can take the plea of *res judicata*.

In **Gaddam Raghavulu** (supra), petitioner therein, who is a tribal, purchased the land from one Nooka Raju, who in turn purchased the land from father of fourth respondent therein in 1955. Before the original authority, it was held that purchaser is benamidar of one Atchutha Rami Reddy, who was in effective possession of the land and therefore eviction was ordered. The same having been confirmed by the appellate authority, the writ petition was filed *inter alia* on the plea that by reason of the order in LTRP No.42 of 1982, dated 31.8.1994, which operates as *res judicata* and second enquiry is barred. This Court came to the conclusion that the presumption under Section 3(1)(b) of the Regulation against Achutha Rami Reddy stood unrebutted and that as per Section 3(4) of the Regulation, a transfer of land by a tribal in favour of another tribal benami for non-tribal is also transfer. Insofar as the plea of *res judicata* is concerned, this Court observed that if earlier proceedings were dropped because tribal could not produce sufficient evidence, the same does not preclude subsequent enquiry. The relevant observations are as under.

> The learned Counsel for the petitioner relied upon the earlier order passed by the Deputy Collector, Tribal Welfare in LTRP No.42 of 1982 disposing of the case in a one line order. What all was said by the deputy Collector in his order dt.31.8.1984 is this:
>
> > "As seen from the record, RW.2 is a tribal and no evidence worthwhile could be advanced to show that RW.1 has been managing the land as benami. The matter does not attract the provisions of the LTR-1 of 59 as amended subsequently. Hence further proceedings are dropped."
>
> The principle of *res judicata* or a principle analogous thereto shall be applied with caution and circumspection in dealing with a case arising under the Regulation meant for the protection of the tribes. **If the proceedings were dropped earlier for the reason that the 3rd respondent-tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.** Hence, I am not inclined to accept the contention of the learned counsel in this regard.
>
> (emphasis supplied)

In **Chintalapati Ramalinga Raju v District Collector, Eluru, W.G.District**[5] this Court considered the question whether proceedings for eviction can be initiated when earlier order of the SDC became final. In the said case, in 1981, SDC passed order rejecting an application for ejectment of a non-tribal. Again on 04.11.1998, MRO addressed SDT that action may be taken against petitioner on the ground that the earlier order of SDC passed in 1981 is doubtful. When the same was assailed, learned Single Judge of this Court dismissed the writ petition. In writ appeal, a Division Bench reversed the order of the learned Single Judge and observed as under.

> But, it is a well settled law that when a judgment is rendered under the Regulations, it becomes final and there is no review of the same. It is not disputed that the order dated 05.9.1982 rejecting the application for eviction of the petitioner-appellant herein on the ground that unauthorized possession was rejected and the said order had become final. It is also not disputed by the learned Government Pleader, Social Welfare, that there is no review provision in the A.P. Scheduled Areas Land Transfer Regulations, 1959. In fact, that legal position is well settled by series of judgments of this Court.

The plea of *res judicata* was not considered by the Division Bench in the above judgment. In the considered opinion of this Court, the Division Bench was dealing with a question whether the original authority which passed an order of ejectment or otherwise can review its own order when it became final. Applying the settled principle that unless specifically conferred, a statutory authority cannot review its own order, it was held that when once an order is passed by the SDC, the same cannot be reviewed by him. In one way this decision helps the petitioner in this present case. Admittedly, the case filed by the predecessor of fourth respondent in 1977 has become final and no appeal was filed. After death of his father, fourth respondent himself filed SR No.617 of 1998 and therefore it is doubtful whether he could have filed such a case again, when he claims a right as a legal representative of Veeraswamy Dora.

In **Datla Venkatapathi Raju** (supra), notice issued in Form 'E' under Rule 7(2) of the Rules, was challenged *inter alia* on the ground that when earlier proceedings in LTRP No.688 of 1979 initiated against petitioner has become final in W.A.No.32 of 1984, fresh proceedings in 1996 and 1997 are barred. Learned Single Judge, who initially heard writ petition against the notice, opined that doctrine of *res judicata* has no application to the facts of the said case and that in view of the orders of this Court in W.A.No.32 of 1984, it is not permissible for the SDC to reopen the same by initiating fresh enquiry. This order was subject matter of writ appeal before the Division Bench. The appellate Bench referred to the decision in **Gaddam Raghavulu** (supra) and rejected the plea of *res judicata* observing as under.

> There is also no merit in the other contention of Sri N.Subba Reddy that since the alleged transfer is said to be in the year 1971, that is to say, before initiation of the earlier proceedings under sub-section (2) of Section 3 of the Regulation, the 1st appellant should have put forth this allegation also against the 1st respondent in the earlier proceedings, and having failed to do so, it was not permissible

> for him to again initiate proceedings under Section 3(2) of the Regulation. It needs to be noticed under sub-section (2) Section 3 of the Regulation, the vendee of the schedule lands was not impleaded as a party. Be that as it may, the principle of *res judicata* has no application to the facts of this case. The parties to the earlier proceeding and the present proceeding are different. Further, the issue that arose in the earlier proceeding and the issue that arises for consideration and decision in the present proceeding are also different.

The three judgments of this Court discussed herein above would show that (i) Agent, Additional Agent and Agency Divisional Oficer are not conferred with express powers of review. These authorities cannot review their orders either *suo motu* or on an application; (ii) though the principle of *res judicata* as is applied in civil judicial process is not applicable to proceedings under Regulation I of 1959 as amended by Regulation I of 1970, in a given case the authorities under the Regulation can apply the principle of *res judicata* while dealing with the cases filed or brought before them under Section 3(2)(a) of the Regulation, (iii) if the parties to the earlier proceedings are same on the principle of *res judicata* the subsequent proceedings would be barred; (iv) if the issue/issues that arise for consideration in the earlier proceedings and the issues that arise for consideration in the subsequent proceedings are same, fresh proceedings are barred on the principle of *res judicata* and (v) if earlier case is dismissed or dropped because evidence could not be produced, subsequent proceedings are not barred after obtaining fresh evidence.

Applying the above principles to the facts of this case, what happened in this case is this. The land originally belonged to Pouloju Brahmam belonging to Koya, who purchased petition schedule property from Kurram Veeraswamy under registered sale deed dated 04.6.1936 (first sale). Brahmam sold the property under registered sale deed dated 22.5.1939 (second sale) in favour of Podium Ramudu, S/o.Chellappa, who is also tribal belonging to Koya community. These two sales are not prohibited either under the Act 1 of 1917 or in law which was in force in agency areas when first and second sales took place.

In 1942, Podium Chellappa, S/o Ramudu obtained permission under Section 4(1) of Act 1 of 1917 to sell the property in favour of a non-tribal, Bondala Narayana. On the strength of such permission, Podium Ramudu and his three minor brothers, sons of late Chellappa, executed registered sale deed dated 28.6.1942 (third sale) in favour of Bondala Narayana, father of vendor of petitioner's mother. There is no dispute that Bondala Narayana is surviving by legal heir, Dharanikota Durgamma. She sold the property under registered sale deed dated

31.10.1957 (fourth sale) in favour of Bondala Narasamma, mother of the petitioner.

The question is whether third and fourth sales are barred by Regulation I 1959. Both these sales are prior to 04.3.1959, (when Regulation I of 1959 came into force) and also prior to 03.2.1970 (when Regulation I of 1970 came into force). In view of Section 10(1) (b) of Regulation sale effected before commencement of Regulation I of 1959 shall have to be valid. As there was no prohibition for non-tribal to transfer his immovable property in favour of another non-tribal prior to 03.2.1970, as held by Full Bench of this Court in **Gaddam Narasa Reddy** (supra) and the decision of the Supreme Court in **S.Venkata Ramanaiah** (supra), the sale cannot be faulted. But, still the petitioner has to show that the third sale in favour of father of vendor of the petitioner's mother is valid.

Section 4(1) of Act 1 of 1917 prohibits the transfer of immovable property by a member of hill tribe in favour of non-hill tribe unless previous consent of the Agent or any prescribed officer is obtained. In exercise of powers under Section 7 of Act 1 of 1917, Governor-in-Council promulgated Rules vide Order No.187, dated 22.1.1918. Rules 2 to 5 are relevant and read as under.

2. If the transfer of immovable property under Section 4(1) of the Act to or in favour of a person not a member of a hill tribe is a mortgage without possession, the District Munsif having jurisdiction may grant the necessary written sanction. In all other cases of transfer the written permission of the Assistant Agent is necessary.

3. Ejectment under Section 4(2) of the Act can be ordered only by the Agent or by the Assistant Agent having jurisdiction.

4. Appeals from an ejectment order under Section 4(2) of the Act can be ordered only by the Agent or by the Assistant Agent shall lie within two months to the Agent and appeals from orders of Agent within three months to the Governor-in-council.

Provided that the appellate authority can admit any appeal if the appellant can show just and reasonable cause why the appeal was not presented in time there shall be no second appeal.

5. There shall be no sale of immovable property under Section 6 of the Act without the written permission of the Assistant Agent the property such shall be sold only to member of hill tribe unless it is otherwise ordered in writing by the Assistant Agent, shall be by public auction and shall be held not less than one month after attachment.

The conspectus of the above Rules would show that if the transfer of immovable property under Section 4(1) of the Act is in favour of a person who is not a member of hill tribe and such transfer is

mortgage without possession, the District Munsif has power to grant necessary written sanction. In all other cases of transfer like lease, gift, exchange, sale, written permission of Assistant Agent is necessary. Further the immovable property of a member of hill tribe can neither be attached nor sold in execution of money decree unless it is ordered in writing by the Assistant Agent.

Thus the Assistant Agent having jurisdiction over the matter is certainly competent to give prior permission for the sale of the land. When third sale was effected by Podium Ramudu and his three minor brothers, in favour of Bondala Narayana, the permission of the Special Assistant Agent was obtained, which is proper compliance with Section 4(1) of Act 1 of 1917. Therefore the third sale is valid as per Section 10(1)(b) of Regulation I of 1959. As the fourth sale is prior to coming into force of the Regulation I of 1970 by a non-tribal in favour of another non-tribal, the same is not rendered void under Section 3(1)(a) of the Regulation.

When the SDC conducted enquiry in SR No.26 of 1977, all these documents were considered. The said case was filed by the immediate predecessor of fourth respondent, Veeraswamy Dora, against the immediate predecessor of petitioner. These predecessors through whom the parties in the present case claim right are also same and virtually the earlier proceedings was inter parties. The issue involved is also the same. Therefore the principle of *res judicata* is attracted. As noticed supra permission was granted by Special Assistant Agent, Bhadrachalam, that copies of sale deeds were considered by Special Deputy Collector in SR No.26 of 1977, that the said order has become final and therefore further enquiry is barred. Even otherwise this Court, after examining the validity, is of considered opinion that third and fourth sales do not attract the provisions under Act 1 of 1917 and Regulation I of 1959.

Learned Government Pleader raised two additional issues during the course of his arguments. He contends that the validity of the permission granted by the Special Assistant Agent, Bhadrachalam, permitting Podium Chellappa cannot be taken for granted, especially when the original permission granted is not produced by the petitioner's vendor in the earlier enquiry. Secondly, Podium Chellappa purchased the property under second sale benami for Bondala Narayana, which attracts Sections 3 and 4 of Regulation I of 1959. These two submissions are misconceived and without any merit. This Court has summoned the file from the office of the Special Deputy Collector in S.R.No.26 of 1977. When the petitioner's predecessor defended the case, copy of the permission dated 28.3.1942 was produced and it is very much found in the file. The said

memo reads as under.

Copy of memo No.6/42 dated 17.5.42 from the Special Assistant Agent, Bhadrachalam to the Deputy Tahsildar, Polavaram.

Sub: Agency Act I of 1917 – Polavaram Tq-Ramannapalem (v)-Permission for alienation – granted.

Read: Petition dated 10.3.42 of Podiam Chellappa of Koya Rajahmundry village and Polavaram Deputy Tahsildar's Ref.A-1-849/2 dated 28.3.42.

The petitioner Podiam Chellappa is permitted to sell the following lands to Bondala Narayana for discharging the products executed by him for Rs.600/- in favour of the Bondala Narayana. Full satisfaction must be recorded in the note and the note must be put into the hands of the petitioner in the presence of the Sub Registrar before the permitted sale is registered.

	Schedule	Extent
	Sy.No.	Ac.cts
Ramannapalem village	22/2	3.52 Dry
	29	3.26 Dry
	22/1	3.54 Dry
		10.32

Sd. A.Mc.M.Webster,
Spl.Asst.Agent.

L.Dis.849/2

Copy communicated to the Revenue Inspector, Jangareddigudem, and Village Officers, Ramannapalem for information

Sd.B.Gurulingachari,
B.O. Dy.Tahsildar
Sd/- xx
Accountant.

The above document supports the contention of the petitioner that the third sale was effected after obtaining prior written consent of the Special Assistant Agent, Bhadrachalam. Be it noted that there is no denial that there was such a Special Assistant Agent at Bhadrachalam during relevant period. The submission that father of Chellappa purchased the property from Brahmam, benami on behalf of Bondala Narayana, is a contention, which is not supported even by an iota of evidence either before the lower authority or before this Court. The plea of learned Government Pleader that the petitioner should be denied relief on the ground that alternative remedy is not availed, is an

argument with which, in the facts and circumstances of this case, this Court is not impressed. As held by the Supreme Court in **Whirlpool Corporation v Registrar of Trade Marks**[6], in appropriate cases, the availability of alternative remedy does not bar exercise of jurisdiction under Article 226 of Constitution of India. This is one such case.

The writ petition, for the above reasons, must succeed and accordingly is allowed. The impugned order of the second respondent and the impugned panchanama are set aside. There shall be no order as to costs.

August , 2007 (**V.V.S.RAO,J**)

NOTE:

1. Dispatch order copy in one week.
2. **LR copy be marked**.

(By order)
YS

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[1] AIR 1982 AP 1 (FB)

[2] (1995) 6 SCC 545 = AIR 1996 SC 224

[3] 1994(2) An.WR 216

[4] 2002(4) ALT 669 (DB)

[5] 2000(4) ALD 443(DB)

[6] AIR 1999 SC 22